IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2884 OF 2006.

Raju Ranjan Singh
Alia Guddusingh Thakur .. Applicant.
V/s
The State of Maharashtra ..Respondent.

Mr. S.K. Chaurasiya i/b Mr. A.M. Saraogi for the applicant.

Mr. P.A. Pol, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : 24TH AUGUST, 2006.

P.C.

. The present applicant has been arrested pursuant to the FIR lodged on 24th January, 2005, being FIR No. 31/2005.

2. The same was initially registered alleging offence under section 307 of Indian Penal Code. Later on, the injured succumbing to the injuries, the FIR was modified and section 302 was invoked.

3. It is unfortunate that the Courts below are not aware of the mandate of the Juvenile Justice (Care and Protection of Children) Act, 2000. The applicant has specifically contended that he was born on 11th July,

1987. On 24th January, 2005, when the incident took place he had completed 17 years of age. Unfortunately, the applicant who has been detained from 24th January, 2005 in custody was not treated in accordance with the provisions of the above Act, but was dealt with like any other accused who has crossed the age of 18 years.

4. Criminal Application No.2902 of 2005 was filed in this Court and argued on the basis that the applicant cannot get protection of the above Act. In such circumstances, and considering the gravity of the offence, this Court proceeded to reject the application on 3rd May, 2005. The result is that the applicant is languishing in custody.

5. The applicant was produced before the Court/Board and was treated as an apparent juvenile. It appears from the record that the Sessions Court by an order dated 12th August, 2005 directed the Chief Judicial Magistrate, Pune to ascertain the age of the applicant and if the accused/applicant is found below 18 years, the case was to be sent to the Juvenile Court or Board. The learned APP points out that this enquiry has till not been concluded.

6. Be that as it may, the applicant preferred the bail application being No.5259705/2005 on the basis that he is juvenile in conflict with law. The application was filed on July 2, 2005 and once again the applicant specifically contended that his date of birth is 11th July, 1987. In para 4 and 5 applicant contended thus:-

> " (4) For ready reference, the applicant-accused invites kind attention of this Hon'ble Court to clause 2(iv) which read "To prescribe a uniform age of 18 years for both boys and girls" and this has not been done by the prosecution and also the Police and also the then Advocate appearing on behalf of the accused-applicant". It is submitted that the prosecution and also the Advocate of the accused have misled the Hon'ble Court in the wake whereof and in particular the reference about the age of the accused-applicant who was juvenile not being brought to the notice of the Hon'ble Court applications for bail were rightly rejected."
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> (5)The accused-applicant as stated above was a juvenile on the date of the alleged incident i.e. 24th January, 2005 and still he is juvenile. Hence, it is just and fair, in the light of circumstances stated above, to designate the applicant-accused as being juvenile and to be sent to the Juvenile Court. In support of the said contention as produced herewith the Certificate of Birth Date of the applicant-accused issued by Smt. Usha Singh, Pradhan of Grampanchayat Manikpur, Tahsil Bansdih, District Balia (U.P.) and School leaving certificate is already in case file."

This application was placed before the Chief Judicial

Magistrate, Pune, who rejected it by his order dated 15th December, 2005.

7. The learned Chief Judicial Magistrate has treated the application as being made by the juvenile in Conflict with law. The learned Judge without application of mind and mechanically observed that the applicant cannot be released on bail because there is a possibility that he will continue such type of activity in future and he will involve himself with bad company.

8. It is pertinent to note that no material was placed by the prosecution in support of its alleged request not to release the applicant on bail because of a possibility that he will indulge in such type of activities in future. Today also the application is not opposed on this ground. The entire affidavit filed is silent to this vital aspect.

9. Yet, it is unfortunate that the learned Magistrate rejected the application only by holding that the applicant is involved in serious offence.

10. The agony of the applicant does not end here

because he was advised to file a criminal appeal against the order of learned Chief Judicial Magistrate, Pune. The appeal was purportedly filed under section 52 of the Juvenile Justice Act.

11. The appeal was also dismissed despite holding that the age of the applicant/appellant at the time of alleged incident was 17 years. The learned Sessions Judge also did not apply his mind to a vital aspect, although he has referred to section 12 of the Act.

12. In paragraph 9 and 10 of the Sessions Court order this what has observed.

> " (9) Admittedly, the appellant has been juvenile in conflict with law and his case is also pending before the Court of Chief Judicial Magistrate, Pune, for hearing. The age of appellant, at the time of alleged incident, was 17 years. Moreover, he is not residing in Maharashtra. It is important to note that as per observations of the learned Chief Judicial Magistrate, Pune, that the present juvenile in conflict with law assaulted deceased by means of iron pipe, due to which the deceased sustained head injury and succumbed to it. The nature of the offence is serious one and if he is enlarged on bail, there is possibility that he will continue such a type of activity in future and he will involve with the bad company."
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> "(10) It is an admitted fact that the appellant has not completed his age of 18 years on the date of alleged incident. The certified copy of

> charge-sheet very well shows that the juvenile in conflict with law has committed non-bailable offence of committing murder, which is punishable under Section 302 of the Indian Penal Code. No doubt, as per the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, when any person accused of bailable or non-bailable offence, and apparently a juvenile is arrested or detained, he be released on bail with or without surety, but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him to association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

13. Thus, aggrieved by the orders dated 15th December, 2005 and 7th March, 2006 the present application for bail has been filed by the applicant.

14. Mr. Chaurasiya appearing for the applicant contended that once the applicant is held to be a juvenile in conflict with law and his application is dealt with as such then none can ignore the mandate of section 12 of the Act. He invites my attention to section 12 and submits that this Section is at par with the earlier section 18. In other words, the repealed Act of 1986 contained identical provision. He pointed out that a bare reading of the same would indicate that it overrides General law, and when it comes to a

juvenile the mandate is that he is to be released on bail however, if there are reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that relief would defeat the ends of justice, then bail can be refused. It is contended by Mr. Chaurasiya that no such material was ever produced save and except the bare words and that is how the orders under challenge read. He submits that the learned Sessions Judge has not found that bail would defeat the ends of justice and therefore he should not be released.

15. The learned A.P.P. supports the impugned orders and contends that there is no absolute right of release on bail and section 12 has to be read accordingly. Hence, considering that the enquiry into the age of the applicant being pending, this is not a fit case where this court should consider the request for enlarging the application on bail. Accordingly he submits that the application be rejected. He further submits that the applicant has suppressed from the learned Magistrate that the enquiry into the age of the applicant was directed by the learned Sessions Judge, which enquiry is

inconclusive. In such circumstances, no discretion be exercised in favour of the applicant and application be dismissed.

15A. A Juvenile has been defined in Section 2 (k) to mean a person who has not completed eighteen year of age. "Juvenile in conflict with law" is a term defined in section 2(l) to mean a juvenile who is alleged to have committed an offence.

16. In the instant case, the Courts below have failed to appreciate that section 3 of the Act permits continuation of inquiry in respect of juvenile who has ceased to be juvenile. So also, the provisions of Section 49 of the Juvenile Justice Act, 2000 contemplate an enquiry but it should be conducted expeditiously. The applicant is in custody although, he is asserting that his age is 17 years on the relevant date and he continues to be a Juvenile. He is neither released from custody nor the enquiry is conducted expeditiously.

17. Chapter II deals with Juvenile in conflict with law. After setting out provisions pertaining to constitution of Board, section 7 provides for procedure

to be followed by a Magistrate not empowered under the Act. Section 7 reads thus:-

> "(1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.
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> (2) The competent authority to which the proceeding is forwarded under Sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it."

18. Section 12 of the Act with which the Courts below were concerned reads as under;-

"(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him o moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the Officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to

an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

19. Sub-Section (1) provides that when any person accused of a bailable or non-bailable offence and apparently a juvenile, is arrested or detained or appears or is brought before a Board,. such person shall, notwithstanding anything contained in the Code of Criminal Procedure, or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released, if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. In this case such a material is not placed before the Court nor on the basis of allegation made such an inference can be drawn straight way, without any even prima facie material in that behalf. However, no general rule can be laid down, and it must ultimately depend on the facts and circumstances of each case.

20. However, it is of some importance to note that even if a person is arrested and not released on bail

under Sub-Section (2) and (3) the mandate is that Officer-in-charge of Police station shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board. Sub-Section (3) provides that when such person is not released on bail under subsection (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

21. After noticing the observations in the orders under challenge it is clear that the Courts below have proceeded on the basis that at the relevant time the age of juvenile in conflict with law was 17 years. That he has been dealt with as such is clear from the above reproduced observations and findings. In such circumstances, and when the learned Sessions Judge was aware of the provisions, the Courts below could not have directed that the applicant be kept in custody. In para 12 and 13 of the order the learned Session Judge concludes that the applicant has no permanent residence in Maharashtra State or particularly, in Pune. He has no relatives in Maharashtra. The applicant does not

dispute this position. However, the learned Sessions Judge observed that the offence is serious and mechanically reproduced the subsequent wordings of section 12 without there being any material placed on record and rejected the appeal. Consequently, the order of the Chief Judicial Magistrate is confirmed. Resultantly, the applicant continues to be detained in custody.

22. These are not satisfactory state of affairs at all. Section 12 does not permit detention even if the inquiry into the age is pending. Even if the person is a apparent juvenile the provisions are applicable. Adherence to these provisions does not mean that the Board/Court is helpless in the matter. Even while sending a apparent juvenile to an Observation Home the Board can issue such further directions as would not hamper investigations so also ensure that the juvenile is available for enquiry and trial. The Observation Home can be directed along with investigating machinery to take such precautionary measures as are provided in law and ensure protection of juveniles and their attendance for enquiry and trial. The provisions of the Act which are meant to protect and safeguard the

interest of children and specially juveniles so also juvenile in conflict with law ought to receive an interpretation which would advance its object and purpose and not defeat it. All concerned ought to be aware that while dealing with juveniles there is responsibility and duty to see that they are not encouraged to take to crime even if they are guilty, prima facie, of commission of a serious offence. The Supreme Court in the Case of Sheela Barse V. Union of India reported in **AIR 1986 SC 1773** has observed as under:-

> "We made an Order on 12th July, 1986 issuing a various directions in regard to physically and mentally retarded children as also abandoned or destitute children who are lodged in a various] jails in the country for "safecustody". We also directed the Director General of Doordarshan as also the Director General of All India Radio to give publicity seeking co-operation of non-governmental social service organisations in the task of rehabilitation of these children. We were extremely pained and anguished that these children should be kept in jail instead of being properly looked after, given adequate medical treatment and imparted training in various skills which would make them independent and self-reliant. Some years ago we came out

with a National Policy for the Welfare of children which contained the following preambulatory declaration:-

"The nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice."

If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. it is matter of regret that despite statutory

provisions and frequent exhortations by social scientists, there are still large number of children in different jails in the country as now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences, they must not be kept in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in jail where the children are kept is separate from the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on the hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail."

The problem of detention of children accused on an offence would become much more easy of solution if the investigation by the police and the trial by the Magistrate could be expedited. The report of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally, why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal Courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are Juvenile Courts, they are nothing but a replica of the ordinary criminal Courts, only the label being changed. The same Magistrate who sits in the ordinary criminal Court goes and sits in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Government with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrate

> who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach."

23. In my view, therefore, the approach of the Courts below cannot be sustained. The continuous detention of the applicant is, prima facie, illegal. However, without remitting the matter back for fresh consideration of the application and since prima facie observations have now been made with regard to the age of the applicant, interest of justice would be subserved, if the applicant is directed to be shifted from custody to an observation home in Pune. The applicant shall be shifted within a period of one week from the date of receipt of a copy of this order. The applicant shall be shifted and kept at the observation or shelter home till the conclusion of the enquiry after which it would be open for the Courts below to pass such orders as per permissible in law.

24. However, Shri Pol learned A.P.P. request that some time frame be determined for conclusion of the pending enquiry into the age of the applicant. This request is reasonable and the said enquiry be completed by the competent authority/board as expeditiously as possible and within a period of eight weeks from the date of receipt of this order. None dispute that the enquiry is crucial. It is upon the outcome of the same that all further proceedings would depend. In a decision reported in **AIR 2000 SC 2264** (Arnit Das V. State of Bihar) the Supreme Court while construing similar provisions under the old Juvenile Act observed thus:-

> "There are several provisions in the Act which provide for first appearance of the person before the competent authority, Competent Authority has been defined in clause (d) of Section 2 to mean, in relation of neglected juveniles, a Juvenile Welfare Board constituted under Section 4 of the Act and, in relation to delinquent juveniles, juvenile Court and where no such Board or Juvenile Court has been constituted, includes any Court empowered under sub-section (2) of Section 7 to exercise the powers conferred on board or Juvenile Court, Under sub-section (2) of Section 7 where no Board of Juvenile Court has been constituted for any area, the powers conferred on the Board or the Juvenile Court by or under the Act shall be exercised in that area by the District Magistrate or the Sub-Divisional Magistrate or any Metropolitan or Judicial Magistrate of the First Class, as the case may be. The powers conferred on the Board or Juvenile Court may

also be exercised by the High Court and the Court of Sessions when the proceedings comes before them in appeal, revision or otherwise."

"The use of the word 'is' at two places in sub-section (1) of Section 32 of the Act read in conjunction with 'a person brought before it' also suggests that the competent authority is required to record the finding by reference to an even in praesenti before it, i.e. by reference to the date when the person is brought before it and not by reference to a remote event i.e. the date on which the offence was committed.

During the course of hearing the Court posed a question to Shri U.R. Lalit, the learned Senior Counsel for the appellant- What happens if a boy or a girl of just less than 16 or 18 years of age commits an offence and then leaves the country or for any reasons neither appears nor is brought before the competent authority until he or she attains the age of say 50 years? If the interpretation suggested by the learned Senior Counsel for the appellants were to be accepted, he shall have to be sent to juvenile home, special home or an observation home or entrusted to an after-care organisation where there would all be boys and girls of less than 16 or 18 years of age. Would he be required to be dealt by a Juvenile Welfare Board or a Juvenile Court? The learned Senior Counsel, with all the wits at his command, had no answer till the end and had to give up ultimately. We are, therefore, clearly of the opinion that the procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds the person brought before it or appearing before it is found to be under 16 years of age if a boy and under 18 years of age if a girls on the date of being so brought or such appearance first before the competent authority. The date of the commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of clause (h) of Section 2 of the Act. If that would have been the intendment of the

Parliament, nothing had prevented it from say so specially."

"Section 3 of the Act also provides a clue to the legislative intent. It provides for an enquiry initiated against the juvenile being continued and orders made thereon even if such person had ceased to be a juvenile during the course of such enquiry. There would have been no need of enacting section 3 if only the age of the juvenile would have been determinable by reference to the date of the offence".

All this exercise would have been avoided if only the Legislature would have taken care not to leave an ambiguity in the definition of juvenile and would have clearly specified the point of time by reference to which the age was to be determined to find a person a juvenile. The ambiguity can be resolved by taking into consideration the Preamble and the Statement of Objects and Reasons. The Preamble suggests what Act was intended to deal with. If the language used by Parliament is ambiguous the Court is permitted to look in to the preamble for construing the provisions of an Act (M/s Burrakur Coal Co. Ltd. and M/s East Indian Coal Co. Ltd. V. Union of India, AIR 1961 SC 954). A preamble of a statute has been said to be a good means of finding out its meaning and, as it were, the key of understanding of it, said this Court in A Thangal Kunju Musliar V. M. Venkatachalam Potti, AIR 1956 S.C. 246. The Preamble is a key to unlock the legislative intent. If the words employed in an enactment may spell a doubt as to their meaning it would be useful to so interpret the enactment as to harmonise it with the object which the Legislature had in its view. The Legislative aims and objectives set out in the earlier part of this judgment go to show that this Legislation has been made for taking care of the care and custody of juvenile during investigation, inquiry and trial, i.e. from a point of time when the juvenile is available to the law administration and justice delivery system; it does not make any provision for a

> person involved in an offence by reference to the date of its commission by him. The long title of the Act too suggests that the content of the Act is the justice-aspect relating to juveniles."
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> "We make it clear that we have not dealt with the provisions of Chapter VI dealing with special offences in respect of juveniles. Prima facie, we feel that the view which we have taken would create no difficulty even in assigning meaning to the term juvenile as occurring in Chapter VI (Sections 41 to 45) of the Act because a juvenile covered by any of these provisions is likely to fall within the definition of neglected juvenile as defined in Clause (1) of Section 2 who shall also have to be dealt with by a Juvenile Board under Chapter III of the Act and the view taken by us would hold the field there as well. However, we express no opinion on the scope of Chapter VI of the Act and leave that aspect to be taken care of in a suitable case. At any rate in the present context we need not vex our mind on that aspect. Section 2 which defines 'juvenile' and 'neglected juvenile' itself begins by saying that the words defined therein would have the assigned meaning unless the context otherwise requires. So far as the present context is concerned we are clear in our mind that the crucial date of determining the question whether a person is juvenile is the date when he is brought before the competent authority."

25. The trial has been already expedited by this Court. Shri Chaurasiya makes a serious grievance that the trial ought to have been concluded within a period of 6 months, as stipulated in this Courts order. The period of more than a year has lapsed from the date of this Court's order but there is no progress. The

Juvenile Justice Board or the Court which is seized of the case shall decide the same as expeditiously as possible and in any event by 31st January, 2007, failing which this Court will proceed to hold that there is breach of direction issued earlier as well as today and take such action as is permissible in law against all concerned.

26. It is clarified that if the enquiry results in a finding that the applicant is entitled to the protection of the Juvenile Justice Act then the said enactment must apply. Otherwise, the provisions of General Law (Cr.P.C.) will apply with full force. I have not expressed any opinion on this aspect and all contentions in that behalf are kept open. Similarly, no opinion is expressed on the merits of the matter.

(S.C. DHARMADHIKARI,J.)